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7 Attorneys for Third-Party Defendants
8 WEST COAST WELDERS SUPPLY COMPANY, INC.;
9 WEST COAST SCRAP PRODUCERS, INC.; AND
10 RICHARD L. BRADLEY, as an individual and as Trustee
11 of the Richard L. Bradley Trust

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 IRVING KESLER, an individual,) Case No. 05 00391 MJJ
12 Plaintiff,)
13 v.)
14 CONTINENTAL CASUALTY COMPANY,)
15 an Illinois Insurance Company; *et al.*,)
16 Defendants.)
17 AND RELATED ACTIONS)
18)

**STIPULATION AND [PROPOSED]
ORDER FOR DISMISSAL**

20 Pursuant to Rule 41(a)(1) and 41(c) of the Federal Rules of Civil Procedure, the parties
21 hereby stipulate to the dismissal of this action on the following terms and conditions and request
22 that the Court so order:

RECITALS

23
24 This Stipulation is entered into by the parties in this action with reference to the
25 following facts:

26 A. On December 27, 2004, Plaintiff Irving Kesler (“Plaintiff” or “Kesler”) filed an
27 insurance coverage suit against “CNA Insurance Company (aka Continental Casualty Company;

1 CNA Casualty of California; National Fire Insurance Company of Hartford; Transcontinental
2 Insurance Company; American Casualty Company of Reading, P.A. [sic]; Valley Forge
3 Insurance Company; Columbia Casualty Company)" and Union Pacific Railroad Company
4 ("Union Pacific") in an action in California State Superior Court, Sonoma County ("the Kesler
5 Action"). The complaint requested declaratory relief with respect to both "CNA Insurance
6 Company" and Union Pacific and relief for breach of contract, breach of the duty to defend,
7 breach of the implied covenant of good faith and fair dealing, and violations of Sections 17200
8 and 17500 of the California Business and Professions Code.

9 B. On January 26, 2005, Continental Casualty Company ("Continental") removed
10 the action to this Court, based on diversity jurisdiction. Continental also moved to dismiss
11 "CNA Insurance Company" as a non-entity defendant erroneously sued.

12 C. On February 1, 2005, Continental filed a counter-claim against Kesler, a cross-
13 claim against Union Pacific, and a third-party complaint for declaratory relief against West Coast
14 Welders Supply Co., Inc. ("Welders Supply"), West Coast Scrap Producers, Inc. ("Scrap
15 Producers"), West Coast Metals, Inc. ("West Coast Metals"), Pacific Junk, Inc. ("Pacific Junk"),
16 Richard L. Bradley ("Bradley"), Jack L. Gardner ("Gardner"), William Whitman ("Whitman"),
17 the legal representative of the Estate of Donald Kesler, and Roes 1-50.

18 D. On February 19, 2005, Kesler electronically filed a "Third-Party Complaint
19 of Plaintiff and Counter-Defendant, Irving Kesler to Counter-Claim of Defendant Continental
20 Casualty Company" against Continental Casualty Company; Transport Insurance Company;
21 CNA Casualty of California; National Fire Insurance Company of Hartford; Transcontinental
22 Insurance Company; American Casualty Company of Reading, Pa.; Valley Forge Insurance
23 Company; and Columbia Casualty Company for false representations/advertising and seeking
24 certain other relief.

25 E. On February 19, 2005, Kesler and Continental entered into a Stipulation for
26 Amendment to Correct Party Defendant because Kesler erroneously sued Continental as "CNA
27 Insurance Company." Kesler and Continental agreed that Kesler would amend his complaint to

1 removal all references to "CNA Insurance Company (aka Continental Casualty Company; CNA
2 Casualty of California; National Fire Insurance Company of Hartford; Transcontinental
3 Insurance Company; American Casualty Company of Reading, P.A. [sic]; Valley Forge
4 Insurance Company; Columbia Casualty Company)" and would refer to defendant as
5 "Continental Casualty Company;" and that Continental would withdraw its motion to dismiss
6 "CNA Insurance Company."

7 F. On February 25, 2005, Kesler filed a First Amended Complaint naming
8 Continental as a defendant, as well as Union Pacific. It alleged causes of action for declaratory
9 relief against Continental and Union Pacific; and for breach of contract, breach of duty to
10 defend, breach of implied covenant of good faith and fair dealing, violation of Business &
11 Professions Code sections 17200 and 17500 against Continental.

12 G. On April 18, 2005, third-party plaintiffs Scrap Producers and Bradley filed a
13 counterclaim against Continental for breach of written contract and breach of implied covenant
14 of good faith and fair dealing.

15 H. On April 26, 2005, third-party plaintiffs West Coast Metals, Gardner, and
16 Whitman filed a counterclaim against Continental for breach of contract and breach of implied
17 covenant of good faith and fair dealing.

18 I. On July, 29, 2005 "Continental Casualty Company, National Fire Insurance
19 Company of Hartford; American Casualty Company of Reading, P.A., Transcontinental
20 Insurance Company; Valley Forge Insurance Company; Columbia Casualty Company, and
21 Transportation Insurance Company" filed a Third Party Complaint against Welders Supply,
22 Scrap Producers, Bradley for declaratory relief and against Hartford Accident and Indemnity and
23 Great American Insurance Company for equitable contribution/reimbursement.

24 J. On December 15, 2005, "Continental Casualty Company, National Fire Insurance
25 Company of Hartford; American Casualty Company of Reading, P.A., Transcontinental
26 Insurance Company; Valley Forge Insurance Company; Columbia Casualty Company, and
27 Transportation Insurance Company" filed an Amended Third Party Complaint against Welders

1 Supply, Scrap Producers, Bradley, West Coast Metals, Gardner, Whitman, Kesler, and Pacific
2 Junk; and as Roe I, the unknown representative to the Estate of Donald S. Kesler, for declaratory
3 relief; and against Fireman's Fund Insurance Company and some third-party defendants for
4 indemnity/reimbursement.

5 STIPULATIONS RE DISMISSALS

6 1. All claims, cross-claims, counterclaims, and third-party claims against Union
7 Pacific are hereby dismissed WITH PREJUDICE.

8 2. The following are hereby dismissed WITHOUT PREJUDICE:

9 (a) All third-party claims by Continental Casualty Company and Third-Party
10 Defendants National Fire Insurance Company of Hartford; American Casualty Company of
11 Reading, PA, Transcontinental Insurance Company; Valley Forge Insurance Company;
12 Columbia Casualty Company; and Transportation Insurance Company against Fireman's Fund
13 Insurance Company; and

14 (b) All claims, cross-claims, counterclaims, and third party-claims for declaratory
15 relief not dismissed pursuant to paragraph 1 of this Stipulation.

16 3. To the extent not dismissed under paragraphs 1 or 2 of this Stipulation, all other
17 claims, cross-claims, counterclaims, and third-party claims are hereby dismissed WITH
18 PREJUDICE.

19 5. Nothing in this Stipulation or the resulting dismissal shall be construed or
20 interpreted to prejudice any future actions by or against Continental or any of its affiliated
21 insurance companies (including but not limited to National Fire Insurance Company of Hartford;
22 American Casualty Company of Reading, Pa.; Transcontinental Insurance Company; Valley
23 Forge Insurance Company; Columbia Casualty Company, and Transportation Insurance
24 Company) as to any claims that are not released under the settlement agreements entered in this
25 action.

26 6. Each party shall bear its own costs of suit, litigation expenses, and attorneys' fees
27 in this action.

1
2 Dated: January 23, 2006 LAW OFFICES OF HANS HERB
3
4 By: 
5 Hans W. Herb
6 Attorneys for Plaintiff IRVING K. KESLER
7
8 Dated: January _____, 2006 LEVY, RAM & OLSON LLP
9
10 By: Arthur D. Levy
11 Attorneys for Cross-Complainants WEST COAST
12 WELDERS SUPPLY COMPANY, INC.; WEST
13 COAST SCRAP PRODUCERS, INC.; and
14 RICHARD L. BRADLEY
15
16 Dated: January _____, 2006 CARROLL, BURDICK & McDONOUGH LLP
17
18 By: G. David Godwin
19 Attorneys for Defendant/Third Party Claimant
20 CONTINENTAL CASUALTY COMPANY
21
22 Dated: January _____, 2006 GREENBERG GLUSKER FIELDS CLAMAN
23 MACHTINGER & KINSELLA LLP
24
25 By: Shiraz D. Tangri
26 Attorneys for Defendant/Cross-Defendant
27 UNION PACIFIC RAILROAD COMPANY
28
29

STIPULATION AND [PROPOSED] ORDER FOR DISMISSAL

1

2 Dated: January _____, 2006

LAW OFFICES OF HANS HERB

3

4

By:

Hans W. Herb
Attorneys for Plaintiff IRVING K. KESLER

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7

Dated: January 26, 2006

LEVY, RAM & OLSON LLP

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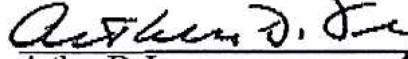
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By: 
Arthur D. Levy.
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MACHTINGER & KINSELLA LLP

By: _____
Shiraz D. Tangri
Attorneys for Defendant/Cross-Defendant
UNION PACIFIC RAILROAD COMPANY

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BEYERS, COSTIN & CASE

By: _____
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GARDNER; and WILLIAM WHITMAN

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Hans W. Herb
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5 Hans W. Herb
6 Attorneys for Plaintiff IRVING K. KESLER

7 Dated: January _____, 2006

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12 COAST SCRAP PRODUCERS, INC.; and
13 RICHARD L. BRADLEY

14 Dated: January _____, 2006

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15 By:

16 G. David Godwin
17 Attorneys for Defendant/Third Party Claimant
18 CONTINENTAL CASUALTY COMPANY

19 Dated: January 26, 2006

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21 MACHTINGER & KINSELLA LLP

22 By:

23 Shiraz D. Tangri
24 Attorneys for Defendant/Cross-Defendant
25 UNION PACIFIC RAILROAD COMPANY

26 Dated: January _____, 2006

27 BEYERS, COSTIN & CASE

28 By:

29 Cameron Scott Kirk
30 Attorneys for Third-Party Defendants
31 WEST COAST METALS, INC.; JACK L.
32 GARDNER; and WILLIAM WHITMAN

LAW OFFICES OF HANS HERB

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Hans W. Herb
Attorneys for Plaintiff IRVING K. KESLER

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UNION PACIFIC RAILROAD COMPANY

Dated: January 23, 2006

BEYERS, COSTIN & CASEY

By:

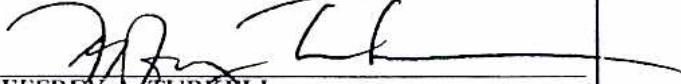
Cameron Scott Kirk
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WEST COAST METALS, INC.; JACK L.
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STIPULATION AND [PROPOSED] ORDER FOR DISMISSAL

1 Dated: January 27, 2006

CARON CONSTANTS & WILSON

2 By:

3 
4 JEFFREY A. TURKELL
5 Attorneys for Third-Party Defendant
6 FIREMAN'S FUND INSURANCE CO.
7
8
9
10

11 IT IS SO ORDERED.

12 Dated: January 31, 2006

